

## **ENVIRONMENTAL REGULATION**

### **Pollution Prevention Program**

#### **Conversion from SIC Codes to NAICS Codes: Definition of “Industrial Facility”**

#### **Special Adopted and Concurrent Proposed Amendments: N.J.A.C. 7:1K-1.5, 3.1, and 5.1**

#### **Special Adopted and Concurrent Proposed New Rule: N.J.A.C. 7:1K-1.9**

Special Amendment and New Rule Adopted and Concurrent Proposed Amendment and  
New Rule Authorized: (1/27/04) by Bradley M. Campbell, Commissioner, Department  
of Environmental Protection.

Filed: January 28, 2004

Authority: N.J.S.A. 13:1B et seq., 13:1D-35 et seq., and 13:34-5A-1 et seq.

Calendar Reference: See summary below for explanation of exception to calendar  
requirement.

DEP Docket Number: 28-03-12/413

Concurrent Proposal Number: \_\_\_\_\_

Effective Date:

Expiration Date: (270 days from effective date)

Submit written comments (by April 30, 2004) to:

Leslie W. Ledogar, Esq.

Attention: DEP Docket No. 28-03-12/413

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street

P.O. Box 402

Trenton, NJ 08625

The amendments and new rule were adopted in accordance with N.J.S.A. 13:1D-141, et seq. and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c), as implemented by N.J.A.C. 1:30-6.4). Concurrently, the provisions of the amendments and new rule are being proposed in accordance with the rulemaking requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. The readopted amendments and new rule will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f)) if filed on or before the amendments and new rule's expiration date in accordance with N.J.S.A. 13:1D-141 et seq.

The agency special adoption and concurrent proposal follows:

#### Summary

Because a 60-day comment period is provided for this notice of proposal, the concurrent proposal is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

The New Jersey Pollution Prevention Act establishes requirements intended to promote pollution prevention by encouraging the reduction of the use and nonproduct output generation of hazardous substances by industrial facilities. The requirements apply to owners or operators of facilities having certain listed Standard Industrial

Classification (SIC) numbers, if the facilities store, produce or use specified substances at given thresholds. As a result of the 1993 North American Free Trade Agreement (NAFTA) with Canada and Mexico, the Federal Office of Management and Budget (OMB) replaced the SIC coding system with a new, international North American Industry Classification System (NAICS) coding system. Consequently, it became necessary for the Department to redefine the Pollution Prevention regulated community in terms of NAICS codes. Legislation enacted effective August 15, 2003, P.L. 2002, c. 157 (N.J.S.A.13:1D-138 et seq.), directs the Department to adopt rules identifying with the NAICS codes the generally equivalent universe of facilities that have been, to date, covered by the SIC codes listed in the Pollution Prevention Act and the Department's implementing rules at N.J.A.C. 7:1K. The SIC to NAICS conversion for the Worker and Community Right to Know Program under N.J.S.A. 34:5A-1 et seq. and the Department's implementing rules at N.J.A.C. 7:1G, which is interrelated with the Pollution Prevention Program, is the subject of a separate special adoption and concurrent proposal that was published in the New Jersey Register on January 5, 2004 (see 36 N.J.R. 212(a)).

The purpose of the amendments and new rule is to ensure that all currently regulated facilities will continue to be regulated and that no new industrial categories of facilities will become subject to the Pollution Prevention program requirements.

To avoid either expanding the regulated universe to include businesses not currently regulated or removing some currently regulated businesses from coverage under

the Pollution Prevention Program, the Department undertook a systematic comparison of the two classification systems. To effect the conversion from SIC to NAICS codes, the Department is proposing to amend the definition of “industrial facility” at N.J.A.C. 7:1K-1.5 and add Appendix D, which lists the NAICS codes that replace the SIC codes. The Department also proposes to establish exceptions and limitations to the NAICS codes listed in Appendix D that ensure the same universe of regulated entities is maintained.

The Department is proposing other amendments throughout the rules to refer to the NAICS codes rather than SIC codes, specifically, at N.J.A.C. 7:1K-3.1(a), (b), and (d), and 5.1(b)4iii.

The definition of “Standard Industrial Classification” at N.J.A.C. 7:1K-1.5 is proposed to be deleted, and, as explained above, the definition of “Industrial Facility” is proposed to be amended to reference the NAICS codes.

The NAICS codes included in the Appendix D are those published in 2002 by the Executive Office of the President, Office of Management and Budget, ISBN 0-934213-87-9 (NTIS PB2002-502024). If any future revisions of the NAICS codes are made by the Office of Management and Budget, the NAICS codes listed in Appendix D of N.J.A.C. 7:1K will be adjusted as necessary through a notice of administrative change. Doing so will ensure that the mandate of N.J.S.A. 13:1D-138 et seq. for the Department to maintain a constant universe of regulated facilities under this chapter can be met. Proposed new N.J.A.C. 7:2K-1.9 establishes this notice process for updating the NAICS codes in the Appendix.

### Social Impact

The purpose of this special adoption and concurrent proposal is to convert the SIC codes to NAICS codes in the Pollution Prevention program. The amendments and the new rule will not expand the regulated universe to include businesses not currently regulated, nor will they remove currently regulated businesses from coverage under the Pollution Prevention program. Accordingly, the amendments and the new rule are not anticipated to have either a positive or negative social impact.

### Economic Impact

The purpose of this special adoption and concurrent proposal is to convert the SIC codes to NAICS codes in the Pollution Prevention program. The amendments and the new rule will not expand the regulated universe to include businesses not currently regulated, nor will they remove currently regulated businesses from coverage under the Pollution Prevention program. Accordingly, the amendments and the new rule are not anticipated to have either a positive or negative economic impact.

### Environmental Impact

The purpose of this special adoption and concurrent proposal is to convert the SIC codes to NAICS codes in the Pollution Prevention program. The amendments and the new rule will not expand the regulated universe to include businesses not currently regulated, nor will they remove currently regulated businesses from coverage under the

Pollution Prevention program. Accordingly, the amendments and the new rule are not anticipated to have either a positive or a negative environmental impact.

#### Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L.1995, c.65) require State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. This special adoption and concurrent proposed amendments and new rule do not exceed Federal standards, but incorporate the Federal industrial classification standards into N.J.A.C. 7:1K. Accordingly, no Federal standards analysis is required.

#### Jobs Impact

The purpose of this special adoption and concurrent proposal is to convert the SIC codes to NAICS codes in the Pollution Prevention program. The amendments and new rule will not expand the regulated universe to include businesses not currently regulated, nor will they remove currently regulated businesses from coverage under the Pollution Prevention program. Accordingly, the implementation of the amendments and new rule is expected to have no impact on employment and jobs in New Jersey, including the generation or loss of jobs.

#### Agricultural Industry Impact

The purpose of this special adoption and concurrent proposal is to convert the SIC codes to NAICS codes in the Pollution Prevention program. The amendments and new

rule will not expand the regulated universe to include businesses not currently regulated, nor will they remove currently regulated businesses from coverage under the Pollution Prevention program. Accordingly, the amendments and new rule are not anticipated to have any impact on the agricultural industry.

### Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52: 14B-16 et seq., the Department evaluated the effect of the special adopted and concurrently proposed amendments and new rule on small business. The amendments and new rule will not expand the regulated universe to include businesses not currently regulated or remove currently regulated businesses from coverage under the Pollution Prevention program. Any small businesses regulated under the Pollution Prevention program will continue to be regulated, but the amendments and new rule do not impose any additional requirements on those businesses. Accordingly, the Department has determined that no regulatory flexibility analysis is required.

### Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The special adopted and concurrently proposed amendments and new rule do not relate to the State's land use and development policies in a way that would either

encourage or discourage any development or redevelopment in this State contrary to the guiding principles of the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth or implementation of the State Plan.

**Full text** of the special adoption and concurrent proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 1. GENERAL PROVISIONS

### 7:1K-1.5 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

....

"Industrial facility" means any facility having a [Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within the Major Group Numbers, Group Numbers, or Industry Numbers listed in N.J.S.A. 34:5A-3] **North American Industry Classification System (NAICS) code listed in Appendix D, dated and published in 2002 by the Executive Office of the President of the United States, Office of Management and Budget, ISBN 0-934213-87-9 NTIS PB2002- 502024, subject to the specified exceptions and limitations,** and which is subject to the regulatory



requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., or the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.

...

["Standard Industrial Classification (SIC)" means the standard industrial classification codes designating industry groups published by the Executive Office of the President of the United States, Federal Office of Management and Budget in the Standard Industrial Classification Manual (1987 edition) (as amended and/or supplemented), or the North American Industrial Classification System (NAICS) codes published by the Federal Office of Management and Budget that supercede the SIC codes.]

...

**7:1K-1.9 Revisions to North American Industry Classification System Codes for purposes of the definition of “industrial facility.” [Note – I think the focus is on industrial facilities, because of the new definition of the term into which we are incorporating the NAICS. LWL]**

**In the event that the Executive Office of the President, Office of Management and Budget, publishes new or revised North American Industry Classification System (NAICS) codes modifying the 2002 list of NAICS codes on which the definition of “industrial facility” and Appendix D is based, the Department shall modify the NAICS codes as necessary to ensure that, as required by N.J.S.A. 13:1D-139, the generally equivalent universe of industrial facilities continues to be regulated under this chapter. Specifically, the Department shall provide limitations and/or**

**exceptions to the NAICS codes as required to maintain the regulated universe as of August 15, 2003. The Department shall publish in the New Jersey Register a notice of the new or revised NAICS code(s) and the corresponding administrative change(s) to Appendix D .**

### SUBCHAPTER 3. POLLUTION PREVENTION PLANNING REQUIREMENTS

#### 7:1K-3.1 Preparation and submission of pollution prevention planning documents by priority industrial facilities

- (a) The owner or operator of a priority industrial facility required to prepare and submit a toxic chemical release form for calendar year 1993 pursuant to 42 U.S.C. §11023 and having a [Standard Industrial Classification] **North American Industry Classification System Code**, as designated by the Federal Office Management and Budget within Major Group Numbers 26, 28, 30, 33 and 34] **as listed in Table 3.1(a) of Appendix D**, shall:

1. – 4. (No change.)

- (b) The owner or operator of a priority industrial facility required to prepare and submit a toxic chemical release form for calendar year 1995 pursuant to 42 U.S.C. §11023 and having a [Standard Industrial Classification] **North American Industry**

**Classification System Code**, [other than those enumerated in (a) above] **as listed in**

**Table 3.1(b) of Appendix D**, shall:

1.-4. (No change.)

(c) (No change.)

(d) The owner or operator of a priority industrial facility who was not required to prepare and submit pollution prevention planning documents pursuant to (a) or (b) above, but who subsequently becomes subject to the filing of a toxic chemical release form pursuant to 42 U.S.C. § 11023, for example, by the U.S. EPA's addition of new hazardous substances or new [SIC codes] **North American Industry Classification System Code**, shall:

1.-4. (No change.)

(e) – (f) (No change.)

## SUBCHAPTER 5 POLLUTION PREVENTION PLAN SUMMARY

### 7:1K-5.1 Pollution Prevention Plan Summary reporting requirements

\_(b) A Pollution Prevention Plan Summary shall consist, at a minimum, of the following:

1.-3. (No change.)

4. Process-level information (Note: This is the same information contained in Part IA of the Pollution Prevention Plan pursuant to 7:1K-4.3(b)3i) and ii:

i. – ii. (No change.)

iii. A description of each product using a [ four-digit SIC] **six-digit**

**North American Industry Classification System** code. A list of applicable [four-digit

SIC] six digit North American Industry Classification System codes is included [in the Pollution Prevention Guidance Document, which is available from the Department] in the tables in Appendix D; and

iv. (No change.)

5. (No change.)

**APPENDIX D   TABLES OF NORTH AMERICAN INDUSTRY**  
**CLASSIFICATION SYSTEM (NAICS) CODES FOR**  
**REGULATED FACILITIES BY BASE YEAR**

Table 3.1(a) – North American Industry Classification System (NAICS) codes for purposes of N.J.A.C. 7:1K-3.1(a) (Initial base year 1993)

<u>Sector Code</u> <u>or Industry</u> <u>Code</u>	<u>Description</u>	<u>Exceptions and/or Limitations</u>
<b><u>31-33</u></b>	<b><u>Manufacturing</u></b>	
<u>322</u>	<u>Paper Manufacturing</u>	<u>No exceptions or limitations</u>
<u>325</u>	<u>Chemical Manufacturing</u>	<u>Except 325998 - Exception is limited to</u> <u>Aerosol can filling on a job order or</u> <u>contract basis (aerosol packaging)</u>
<u>326</u>	<u>Plastic and Rubber</u> <u>Products manufacturing</u>	<u>Except 326212 - Exception is limited to</u> <u>Tire retreading, recapping or rebuilding</u>
<u>331</u>	<u>Primary Metal</u> <u>Manufacturing</u>	<u>No exceptions or limitations</u>
<u>332</u>	<u>Fabricated Metal Product</u> <u>Manufacturing</u>	<u>No exceptions or limitations</u>

Table 3.1(b) – North American Industry Classification System (NAICS) codes for purposes of N.J.A.C. 7:1K-3.1(b)  
(Initial base year 1995)

<u>Sector Code</u>	<u>Description</u>	<u>Exceptions and/or Limitations</u>
<u>or Industry</u>		
<u>Code</u>		
<b><u>11</u></b>	<b><u>Agriculture, Forestry,</u></b>	
	<b><u>Fishing and Hunting</u></b>	
<u>111998</u>	<u>All Other Miscellaneous</u>	<u>Limited to facilities that reduce maple</u>
	<u>Crop Farming</u>	<u>sap to maple syrup</u>
<u>113310</u>	<u>Logging</u>	<u>No exceptions or limitations</u>
<b><u>21</u></b>	<b><u>Mining</u></b>	
<u>212324</u>	<u>Kaolin and Ball Clay</u>	<u>Limited to facilities operating without a</u>
	<u>Mining</u>	<u>mine or quarry and that are primarily</u>
		<u>engaged in beneficiating kaolin and clay</u>
<u>212325</u>	<u>Clay and Ceramic and</u>	<u>Limited to facilities operating without a</u>
	<u>Refractory Minerals</u>	<u>mine or quarry and that are primarily</u>
	<u>Mining</u>	<u>engaged in beneficiating clay and</u>
		<u>ceramic and refractory minerals</u>

<u>212393</u>	<u>Other Chemical and Fertilizer Mineral Mining</u>	<u>Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating chemical or fertilizer mineral raw materials</u>
<u>212399</u>	<u>All Other Nonmetallic Mineral Mining</u>	<u>Limited to facilities operating without a mine or quarry and that are primarily engaged in beneficiating nonmetallic minerals</u>
<b><u>31-33</u></b>	<b><u>Manufacturing</u></b>	
<u>311</u>	<u>Food Manufacturing</u>	<u>Except 311119 – Exception is limited to facilities engaged in custom grain grinding for animal feed; Except 313330 – Exceptions are limited to facilities engaged in the retail sale of chocolate candy, nuts, popcorn and other confections not for immediate consumption made on the premises; Except 313340 – Exceptions are limited to facilities engaged in the retail sale of nonchocolate candy, nuts, popcorn and other confections not for immediate</u>



consumption made on the premises;

Except 311611 – Exception is limited to facilities engaged in custom slaughtering for individuals;

Except 311612 – Exception is limited to facilities engaged in meat processing from carcasses;

Except 318111 – Retail Bakeries.

<u>312</u>	<u>Beverage and Tobacco</u>	<u>Except 312229 – Exception is limited to</u>
	<u>Product Manufacturing</u>	<u>Tobacco Sheeting Services</u>

<u>313</u>	<u>Textile Mills</u>	<u>Except 313311 – Exception is limited to</u>
		<u>broadwoven piece goods converters and</u>
		<u>broadwoven converting textiles</u>
		<u>facilities, and facilities engaged in</u>
		<u>sponging fabric for tailors and</u>
		<u>dressmakers;</u>
		<u>Except 313312 – Exception is limited to</u>
		<u>narrow woven converting textiles</u>

facilities, and narrow woven piece goods

Converters,

314

Textile Product Mills

Except 314121 – Exception is limited to

Custom drapery manufacturers for retail sale;

Except 314129 – Exception is limited to

Custom slipcover manufacturers for retail sale ;

Except 314999 – Exception is limited to

Binding carpets and rugs for the trade,

Carpet cutting and binding, and

Embroidering on textile products (except apparel) for the trade.

315

Apparel Manufacturing

Except 315222 – Exception is limited to

Custom tailors, men's and boys' suits, cut and sewn from purchased fabric;

Except 315223 – Exception is limited to

Custom tailors, men's and boys' dress shirts, cut and sewn from purchased

fabric;

Except 315233 – Exception is limited to

		<u>Bridal dresses or gowns, custom made,</u>
		<u>Custom tailors, women's, misses' and</u>
		<u>girls' dresses cut and sewn from</u>
		<u>purchased fabric (except apparel</u>
		<u>contractors)(custom dressmakers);</u>
<u>316</u>	<u>Leather and Allied</u>	<u>No exceptions or limitations</u>
	<u>Product Manufacturing</u>	
<u>321</u>	<u>Wood Product</u>	<u>No exceptions or limitations</u>
	<u>Manufacturing</u>	
		<u>Except 323114 – Exception is limited to</u>
<u>323</u>	<u>Printing and Related</u>	<u>Instant printing (i.e., quick printing)</u>
	<u>Support Activities</u>	
<u>324</u>	<u>Petroleum and Coal</u>	<u>No exceptions or limitations</u>
	<u>Products Manufacturing</u>	
<u>327</u>	<u>Nonmetallic Mineral</u>	<u>No exceptions or limitations</u>
	<u>Products Manufacturing</u>	
<u>333</u>	<u>Machinery Manufacturing</u>	<u>No exceptions or limitations</u>

<u>334</u>	<u>Computer and Electronic</u>  <u>Product Manufacturing</u>	<u>Except 334611 – Exception is limited to</u>  <u>Software reproducing;</u>  <u>Except 334612 – Exception is limited to</u>  <u>mass reproducing pre-recorded Video</u>  <u>cassettes, and mass reproducing Video</u>  <u>tape or disk.</u>
<u>335</u>	<u>Electrical Equipment,</u>  <u>Appliance and</u>  <u>Component</u>  <u>Manufacturing</u>	<u>Except 335312 – Exception is limited to</u>  <u>Armature rewinding on a factory basis</u>
<u>336</u>	<u>Transportation Equipment</u>  <u>Manufacturing</u>	<u>No exceptions or limitations</u>
<u>337</u>	<u>Furniture and Related</u>  <u>Product Manufacturing</u>	<u>Except 337110 – Exception is limited to</u>  <u>Wood kitchen cabinet and counter top</u>  <u>manufacturing;</u>  <u>Except 337121 – Exception is limited to</u>  <u>Upholstered furniture, household type,</u>  <u>custom manufacturing;</u>  <u>Except 337122 - Exception is limited to</u>  <u>Nonupholstered, household type, custom</u>

wood furniture manufacturing.

<u>339</u>	<u>Miscellaneous</u>	<u>Except 339115 - Exception is limited to</u>
	<u>Manufacturing</u>	<u>Ophthalmic goods manufacturing, lens</u>
		<u>grinding;</u>
		<u>Except 339116 - Dental laboratories</u>

**48 - 49**                      **Transportation and**  
**Warehousing**

<u>488390</u>	<u>Other Support Activities</u>	<u>Limited to Drydocks, floating (i.e.</u>
	<u>for Water Transportation</u>	<u>routine repair and maintenance of ships</u>
		<u>and boats)</u>

**51**                              **Information**

<u>511110</u>	<u>Newspaper Publishers</u>	<u>No exceptions or limitations</u>
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<u>511120</u>	<u>Periodical Publishers</u>	<u>No exceptions or limitations</u>
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<u>511130</u>	<u>Book Publishers</u>	<u>No exceptions or limitations</u>
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<u>511140</u>	<u>Database and Directory Publishers</u>	<u>Except facilities primarily engaged in Direct mailing advertising services, including Address list compilers, Address list publishers, Address list publishers and printing combined, Address list publishing, Business directory publishers, Catalog of collections publishers, Catalog of collections publishers and printing combined, Mailing list compilers, Directory compilers, and Mailing list compiling services</u>
<u>511191</u>	<u>Greeting Card Publishers</u>	<u>No exceptions or limitations</u>
<u>511199</u>	<u>Other Publishers</u>	<u>No exceptions or limitations</u>
<u>512220</u>	<u>Integrated Record Production/Distribution</u>	<u>No exceptions or limitations</u>
<u>512230</u>	<u>Music Publishers</u>	<u>Except facilities primarily engaged in</u>

Music copyright authorizing use, Music  
copyright buying and licensing, Music  
publishers

**54**                    **Professional, Scientific  
and Technical Services**

<u>541710</u>	<u>Research and Development in the Physical, Engineering and Life Sciences</u>	<u>Limited to facilities primarily engaged in guided missile and space vehicle engine research and development), and Guided missile and space vehicle parts (except engines) research and development</u>
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**81**                    **Other Services (Except  
Public Administration)**

<u>811490</u>	<u>Other Personal and Household Goods Repair and Maintenance</u>	<u>Limited to facilities that are primarily engaged in repairing and servicing pleasure and sail boats without retailing new boats</u>
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Based on consultation with staff, I hereby certify that the above statements, including the Federal Standard Analysis addressing the requirements of Executive Order 27 (1994), permit the public to understand accurately and plainly the purposes and expected consequences of this proposed special adoption and concurrent proposed new rules. I hereby authorize this proposal.

Date: January 27, 2004

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Bradley M. Campbell,  
Commissioner  
Department of Environmental Protection